IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
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ORDER

Kaamiya & Ors.
vs
The Judge, Industrial Tribunal Cum Labour Court, Udaipur & Ors.

S.B. CIVL WRIT PETIITON NO.5037/2004 UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 29th August, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate, for the petitioners.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

This writ petition has been filed against the award dated 4.4.2000 by the petitioners-workmen whereby the reference made to the learned Industrial Tribunal-cum-Labour Court, Udaipur (in short the learned Tribunal) was answered by the impugned award. Feeling aggrieved by that part of the award which denied reinstatement of the petitioners and merely granting lump sum compensation in lieu of reinstatement, the

present writ petition has been preferred. The reference was made at the instance of General Secretary, Sinchai Vighag Karmchari Sangh and was to the effect whether removal of ten workmen at the instance of Executive Engineer, Irrigation Division-I, Udaipur was legal or not and if not to what relief these workmen were entitled to. Names of these ten workmen have been mentioned in the award. While the case of the workmen was that all of them were engaged as Beldar w.e.f. 1.1.1985 and their services were terminated on 1.12.1988, therefore, they have in such manner, continuously worked with the management for a period of four years. On the other hand, the management refuted the claim of the workmen and asserted that these workmen were engaged only on temporary basis in the famine relief works. Such employees are not entitled to semi-permanent status or any other benefits. When the famine relief work was completed and there being no work available with the management, their services were retrenched by serving upon them notice of one month. It has been asserted that when the work on which these workmen were engaged was completed, their services were also liable to be discontinued. The provisions of Industrial Disputes Act, 1947 are not applicable in the famine relief work. Management filed affidavits of Shri Virendra Mal, Asstt. Engineer and Shri Ajay kumar, Asstt. Engineer. In their affidavits they have given details about working of these

workmen. The learned Tribunal on examination of the evidence and material on record finally held that the management could not prove compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947. However, on the question of reinstatement, the learned Tribunal while relying on catena of judgments of the Hon'ble Supreme Court and this Court held that the workmen were not entitled to reinstatement and directed lump sum payment of compensation in the sum of Rs.21,000/- to workmen Kaamiya, Rooplal and Vakta and Rs.15,000/- to the workmen Pratap Singh, Devilal and Kamal Singh.

I have heard Shri Harish Purohi, learned counsel for the petitioner and Shri Rameshwar Dave, learned Dy. Government Advocate appearing for the respondents.

Shri Harish Purohit, learned counsel for the petitioners-workmen argued that once when the learned Tribunal came to the conclusion that compliance of Section 25F of the Industrial Disputes Act, 1947 was not made, it could not deny reinstatement. The relief of reinstatement would follow the finding of violation of section 25F of the Act of 1947 and the learned Tribunal was not justified in directing lump sum compensation in lieu of reinstatement. He argued that no evidence was brought on record that the work in which petitioners were engaged was merely of famine relief and was not of regular nature. He in this connection, relied upon the

cross-examination of Asstt. Engineer Shri Ajay Kumar wherein he admitted that the details with regard to the working period given in his affidavit was exclusive of the period in which workmen were engaged in Jawahar Rojgar Yojana and National Rural Employment Guarantee Programme.

I have carefully examined the award passed by the learned Tribunal and the material on record. The learned Tribunal has in the award given very sound and logical reasons for refusing to direct reinstatement of these ten workmen. It has held that all these workmen were engaged on daily rated basis without being subjected any regular mode of selection and were paid only for the period they worked. The workmen were negligent in not appearing on their services and now almost 14 years have gone by since they were initially engaged and it cannot be expected that by these 14 years they were not work less. The work for which the workmen were engaged was only temporary in nature or department does not have any post now available with them. The learned Tribunal in refusing the reinstatement relied upon number of judgments of the Hon'ble Supreme Court and this Court.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate argued that the workmen on their own saying were lastly engaged upto 1.12.1988 and when the award was passed by the learned Tribunal in the year 2000 already a

period of 12 years had gone by. He argued that the workmen were engaged in the famine relief works under Jawahar Rojgar Yojana and N.R.E.G.P., these schemes and projects started thereunder were no more available with the department and therefore these workmen who are ten in number, their reinstatement could not be made. Learned Tribunal has rightly held that they are not entitled to reinstatement and awarded them lump sum compensation. He has referred to detailed reasons assigned by the learned Tribunal in its award. He has therefore prayed that the writ petition may be dismissed.

I have carefully examined the award passed by the learned Tribunal and the material on record. The learned Tribunal has in the award given very sound and logical reasons for refusing to direct reinstatement of these ten workmen. It has held that all these workmen were engaged on daily rate basis without being subjected to any regular mode of selection and were paid only for the period they worked. The workmen were negligent in not appearing on their services and now almost 14 years have gone by since they were initially engaged and it cannot be expected that by these 14 years they were not working elsewhere. The work for which the workmen were engaged was only temporary in nature and department does not have any post now available with them. The learned Tribunal in refusing the reinstatement relied upon number of judgments of the Hon'ble Supreme Court

and this Court.

In my view, the learned Tribunal did not commit any error of law in refusing to direct reinstatement of the workmen and in directing payment of only lump sum compensation. The award passed by the learned Tribunal does not suffer from any infirmity because the petitioners-workmen were engaged only on daily wages basis for discharging temporary nature of work and now as per the case of the management no such work is available with them.

In view of the aforesaid discussion, I do not find any merit in this writ petition and the same is accordingly dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-